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SUBJECT: UKRAINE: PASSAGE OF JOINT STOCK COMPANY LAW A
MAJOR SUCCESS FOR ECONOMIC REFORM

REF: KYIV 1860

11. Summary: Ukraine's parliament passed a new Joint Stock Company Law on September 17. The law was among the top priorities of any list of desperately needed economic reforms, and its passage, by a large bipartisan majority, is a remarkable piece of good news at a time of intense political infighting. Although the new law is not perfect, it should be a significant improvement over current laws. The new law will also help combat illegal corporate hijacking (also known as "raider" attacks or illegal stripping of assets), which is a growing problem in Ukraine. Once signed by the President, the law will be a real success story for Ukraine and proof that the country's political forces can accomplish key goals when they work together. End Summary.

Joint Stock Company Law Passes

12. The Verkhovna Rada (parliament) passed a long-awaited Joint Stock Company law on September 17. The bill passed with a wide margin of 358 votes in favor, out of a total of 450 MPs, with all parties except the pro-Presidential Our Ukraine-People's Self-Defense (OU-PSD) supporting en masse. (Note: Most OU-PSD MPs abstained from all votes taking place on September 17, apparently out of protest to current political maneuverings (reftel) rather than to the substance of the laws themselves. End Note.) Over 541 amendments were introduced into the law after its first reading in May 2007, and the majority were incorporated into the final text. The bill now goes to President Victor Yushchenko, who can either sign it into law or veto. The President has 15 days to act on this bill. (Comment: Post expects Yushchenko to sign the law, as he has long been a supporter of improved corporate governance measures. Even if the President were to veto, the Rada should be able to muster the 300 votes needed to override. End Comment.)

A Long Labor

13. Ukraine has long suffered from corporate governance problems, particularly in areas like corporate ownership, shareholder rights, transparency, and disclosure. Currently-enforced laws offer scant protection for minority shareholders against insider dealing, asset stripping, profit skimming, and share dilution. A new Joint Stock Company law, meant to improve the situation by introducing sound corporate practices that meet international standards, was first drafted back in 1998, but repeatedly failed to move forward.

¶4. Reform-minded government and business leaders quickly recognized the importance of the draft law, and both the local American Chamber of Commerce and European Business Association contributed to the drafting and became strong advocates for passage. The Commercial Law Center (CLC), a local NGO created and supported by USAID funding, participated in the government's Joint Stock Company Working Group and helped shape the final version of the text. In May 2007, the Rada passed the draft law in the first reading, but a protracted political crisis again delayed further action at that time.

Fixing Basic Corporate Governance Problems

¶5. The new Joint Stock Company Law clarifies the procedures for establishing, governing, and terminating joint stock company activity, as well as the legal mechanisms meant to protect the interests of shareholders. CLC experts reported that the draft law by and large meets the country's most important corporate governance needs. The American Chamber of Commerce added that the law generally complies with EU Directives in the area of corporate governance and with OECD recommendations.

Combating Corporate Hijacking

¶6. Ukraine has for several years been experiencing an escalation in corporate hijacking activity, with as many as 2,500 Ukrainian enterprises being victimized. Predatory

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hijackers (also known as "raiders") take advantage of deficient legislation, corrupt courts, and a weak regulatory system to gain control of companies at the expense of rightful shareholders. A new Joint Stock Company Law was long considered critical to stopping this corporate hijacking activity, and the new law should remove several legal loopholes often utilized by hijackers. Specifically, the law will curb manipulation of shareholder lists, covert acquisition of a controlling share of stock, and groundless appeals of the decisions of a company's general shareholder meetings.

¶7. The Rada passed another anti-hijacking bill on September 18 amending several current laws to ensure that only the police, and not private security companies, can enforce court decisions. The bill will also significantly increase criminal punishment for the unlawful seizure of companies.

But Not Perfect

¶8. Like any piece of legislation, however, the new Joint Stock Company Law will not be perfect. While the full, final text of the new law has not yet been made available to the public, we expect some corporate governance problems to remain, including a shareholder quorum requirement that is currently set at 60 percent. International experts recommend the quorum be set at 50 percent. Furthermore, Post expects that the law will allow for different treatment of companies, depending on whether the firm is a "private/closed" or "public" joint stock company. International best practices suggest equal treatment of shareholder rights regardless of the company type.

Comment: A Success Story for Ukraine

¶9. The passage of the Joint Stock Company Law comes at a trying time for Ukraine, with political disunity again threatening to undermine work on a broad range of issues of importance. This law's passage shows that the government can still accomplish key goals. In addition, the law's

passage was a story of all Ukraine's principal political forces working together -- a Party of Regions government submitted the bill to the Rada to begin the process, President Yushchenko helped raise the profile of the issue, and a BYUT government saw it through to adoption. Once signed by President Yushchenko, the Joint Stock Company Law will enter into force in six months (with some provisions becoming effective in two years) and give economic reforms in Ukraine a needed boost. End comment.

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